

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

TERRY A. DICHTER, M.D.,

Respondent.

Case No. 06-98-82626

OAH No. L-1999110301


**DEFAULT DECISION
AND ORDER**

Physician and Surgeon's Certificate number A 23930, heretofore issued to Respondent Terry A. Dichter, M.D., is hereby revoked.

Pursuant to Government Code section 11520, subdivision (c), the Respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on within seven (7) days after service of the decision on the Respondent. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective at 5:00 p.m. on January 29, 2001.

Dated: December 29, 2000



FOR THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
IRA LUBELL, M.D., CHAIR, PANEL A

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DIVISION OF MEDICAL QUALITY
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TERRY A. DICHTER, M.D.,

Respondent

Medical Board Case No. 06-98-82626

OAH No. L-1999110301

DEFAULT DECISION

[Government Code § 11520]

1. On or about August 4, 1999, Complainant, Ron Joseph, in his official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California, filed Accusation No. 06-98-82626 against Terry A. Dichter, M.D., ("Respondent") before the Division of Medical Quality ("Division").

2. On or about September 3, 1970, the Medical Board of California ("Board") issued Physician and Surgeon's Certificate No. A 23930 to Respondent. The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein, but it expired on June 30, 2000.

FINDINGS OF FACT

3. On or about August 4, 1999, Diana I. Delker, an employee of the Board, served by Certified Mail a copy of Accusation No. 06-98-82626, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and

1 11507.7 to Respondent's address of record with the Division which was and is 2736 Florence
2 Avenue, Huntington Park, California 90266. A copy of the Accusation, the associated
3 supplemental documents previously mentioned, and the Declaration of Service are attached
4 hereto as "**Exhibit A**" and are incorporated by reference as if fully set forth herein.

5 4. The above-described service of the Accusation was effective as a matter of
6 law pursuant to the provisions of Government Code section 11505, subdivision (c).

7 5. On or about August 12, 1999, Respondent executed, signed, and returned a
8 Notice of Defense, requesting a hearing in the above-entitled action. A Notice of Hearing was
9 served by mail at Respondent's address of record, and it informed him that an administrative
10 hearing in this matter was scheduled for May 22, 2000. Respondent failed to appear at that
11 hearing. Before failing to appear at the administrative hearing scheduled for May 22, 2000,
12 Respondent also failed to appear for two Trial Setting Conferences and failed to appear for a
13 Prehearing Conference and a Mandatory Settlement Conference, all of which he was provided
14 written notice of by either the Office of Administrative Hearings or the Office of the Attorney
15 General, or both. A copy of the Respondent's Notice of Defense, the Notice of Hearing and
16 Declaration of Service, as well as four separate pre-trial Orders and Notices issued by the Office
17 of Administrative Hearings are attached hereto as "**Exhibit B**" and are incorporated by reference
18 as if fully set forth herein.

19 6. Government Code section 11506 provides, in pertinent part:

20 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts of
22 the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
23 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless
24 grant a hearing."

25 7. Government Code section 11520 provides, in pertinent part:

26 "(a) If the respondent either fails to . . . appear at the hearing, the agency may
27 take action based upon the respondent's express admissions or upon other evidence and
28 affidavits may be used as evidence without any notice to respondent . . ."

8. Respondent failed to appear at the administrative hearing on May 22, 2000, after being provided with ample, repeated, and proper notice.

9. Pursuant to its authority under Government Code section 11520, the Division finds that Respondent is in default. The Division will take action without further hearing and, based on Respondent's admissions by way of default and the evidence before it contained in **Exhibits A and B**, finds that the allegations, and each of them, in Accusation No. 06-98-82626 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Terry A. Dichter, M.D., has subjected his Physician and Surgeon's Certificate No. A 23930 to discipline.

2. Service of Accusation No. 06-98-82626 and related documents was proper and in accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Division is authorized to revoke Respondent's Physician and Surgeon's Certificate based upon the following violations of the Business and Professions Code, as alleged in the Accusation:

- a. Section 2234, subdivision (a) and (e), dishonest acts,
- b. Sections 2234, subdivision (a) and 2261, knowingly making or signing false documents,
- c. Sections 2234 and 2274, use of words entitling certain medical practice, and
- d. Section 2234, subdivision (c) , repeated acts of negligence.

Attachments:

Exhibit A: Accusation, Case No.06-98-82626; Associated Supplemental Documents; and Declaration of Service

Exhibit B: Notice of Defense; Pre-trial Orders; Notice of Hearing and Declaration of Service

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug. 4 1999
BY Dr. J. L. Linder ANALYST

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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation) Case No. 06-98-82626
Against:)

TERRY A. DICHTER, M.D.) **ACCUSATION**

2736 Florence Avenue)
Huntington Park, CA 90266)

Physician and Surgeon's Certificate)
No. A23930,)

Respondent.)

Complainant alleges:

PARTIES

1. Ron Joseph ("Complainant") brings this accusation
solely in his official capacity as the Executive Director of the
Medical Board of California ("Board").

2. On or about September 3, 1970, Physician and
Surgeon's Certificate No. A23930 was issued by the Board to Terry
A. Dichter, M.D. ("respondent"). At all times relevant to the
charges brought herein, this license has been in full force and
effect. Unless renewed, it will expire on June 30, 2000.

JURISDICTION

3. This accusation is brought before the Board's Division of Medical Quality ("Division"), under the authority of the following sections of the Business and Professions Code ("Code"):

A. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

B. Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

• • •

" (c) Repeated negligent acts.

11 . . .

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate."

/ /

1 C. Section 2261 of the Code provides that
2 knowingly making or signing any certificate or other document
3 directly or indirectly related to the practice of medicine or
4 podiatry which falsely represents the existence or
5 nonexistence of a state of facts, constitutes unprofessional
6 conduct.

7 D. Section 2274 of the Code provides that the use
8 by any licensee of any certificate, of any letter, letters,
9 word, words, term, or terms either as a prefix, affix, or
10 suffix indicating that he or she is entitled to engage in a
11 medical practice for which he or she is not licensed
12 constitutes unprofessional conduct.

13 E. Section 125.3 of the Code provides, in part,
14 that the Division may request the administrative law judge to
15 direct any licentiate found to have committed a violation or
16 violations of the licensing act, to pay the Division a sum not
17 to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 F. Section 14124.12 of the Welfare and
20 Institutions Code provides, in pertinent part, that:

21 (a) Upon receipt of written notice from the Medical
22 Board of California . . . that a licensee's license has been
23 placed on probation as a result of a disciplinary action, the
24 department may not reimburse any Medi-Cal claim for the type
25 of surgical service or invasive procedure that gave rise to
26 the probation . . . that was performed by the licensee on or
27 after the effective date of probation and until the

1 termination of all probationary terms and conditions or until
2 the probationary period has ended, whichever occurs first.
3 This section shall apply except in any case in which [the
4 Board] determines that compelling circumstances warrant the
5 continued reimbursement during the probationary period of any
6 Medi-Cal claim In such a case, the department shall
7 continue to reimburse the licensee for all procedures, except
8 for those invasive or surgical procedures for which the
9 licensee was placed on probation.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Dishonest Acts)

12
13 4. Respondent is subject to disciplinary action under
14 section 2234, subdivisions (a) and (e) in that he has directly or
15 indirectly committed dishonest acts which are substantially related
16 to the qualifications, functions, and duties of a physician. The
17 circumstances are as follows:

18 A. On or about November 21, 1996, in an apparent
19 effort to take advantage of a Food and Drug Administration
20 ("FDA") "grandfather clause" regarding mammography, respondent
21 submitted to the Department of Radiation Management of the
22 Department of Health Services ("DHS") an "Attestation
23 Regarding Requirements of the Mammography Quality Standards
24 Act," representing that he had satisfied the requirements of
25 obtaining 40 hours of continuing medical education in
26 mammography, and of interpreting 240 mammograms in a six month
27 period, prior to October 1, 1994.

1 B. In further satisfaction of the requirements,
2 respondent provided documentation of both the continuing
3 education courses (in the form of certificates of completion
4 from the University of Southern California School of Medicine
5 Department of Radiology ("USC")) and the mammogram
6 interpretations (in the form of a list of names and dates from
7 a facility at which he allegedly was employed).

8 C. Respondent had also represented that he was
9 certified by the American Board of Radiology ("ABR"), and he
10 has used such a designation on multiple pieces of
11 correspondence, including letters to DHS. Upon request,
12 respondent provided a copy of his ABR certification.

13 D. Upon further inquiry with USC, it was
14 discovered that the continuing education courses submitted by
15 respondent did not exist, and that neither the listed
16 instructors nor respondent were known to the USC Director of
17 Mammography Services.

18 E. Upon further inquiry with the facility at which
19 respondent claimed to have interpreted the mammograms, it was
20 initially discovered that respondent's actual term of
21 employment did not coincide with the dates given on the
22 provided list. When additional information was requested,
23 respondent provided a list that included the names of well
24 over 100 male patients who allegedly received mammograms over
25 a six month period. Further inquiries were again made with
26 the facility, and it was discovered that no more than two male
27 patients had actually received mammograms during this time,

1 and that the individual who had allegedly signed the cover
2 letter on behalf of the facility had actually retired from
3 there a year earlier.

4 F. Upon further inquiry with the ABR, it was
5 discovered that respondent has never been certified by that
6 organization.

7
8 **SECOND CAUSE FOR DISCIPLINE**

9 (Knowingly Making or Signing False Documents)

10 5. Respondent is subject to disciplinary action under
11 sections 2234, subdivision (a) and 2261 of the Code in that he has
12 knowingly made and/or signed false documents which are related to
13 the practice of medicine. The circumstances are as follows:

14 A. Paragraph 4, subparagraphs (A) - (F), above, are
15 incorporated by reference as if set forth in full here.

16
17 **THIRD CAUSE FOR DISCIPLINE**

18 (Use of Words Entitling Certain Medical Practice)

19 6. Respondent is subject to disciplinary action under
20 sections 2234 and 2274 of the Code in that he has used letters,
21 words, or terms either as a prefix, affix, or suffix indicating
22 that he or she is entitled to engage in a medical practice for
23 which he is not licensed. The circumstances are as follows:

24 A. Paragraph 4, subparagraphs (C) and (F), above,
25 are incorporated by reference as if set forth in full here.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Repeated Acts of Negligence)

3 7. Respondent is subject to disciplinary action under
4 section 2234, subdivision (c) of the Code in that he has committed
5 repeated acts of negligence in his care and treatment of patients.
6 The circumstances are as follows:

7 A. On or about September 19, 1997, a
8 hystereosalpingogram ("HSG"), a procedure used to help
9 visualize the uterine cavity and fallopian tubes, was ordered
10 and performed on patient M.Z. and subsequently interpreted by
11 respondent, whose impression was bilateral tubal obstruction
12 and superficial erosion of the cervical cuff. The procedure
13 was done with the use of fluoroscopy.

14 B. Respondent's failure to use fluoroscopic
15 guidance makes it impossible to determine whether the lack of
16 tubal visualization on the film is secondary to actual tubal
17 obstruction or merely the failure to use a sufficient volume
18 of contrast, and, as such, constitutes negligence.

19 C. On or about October 3, 1997, a HSG was ordered
20 and performed on patient A.K. and subsequently interpreted by
21 respondent, whose impression was bilateral tubal patency. The
22 procedure was done with the use of fluoroscopy.

23 D. Respondent's failure to use fluoroscopic
24 guidance makes it impossible to determine whether or not
25 bilateral peritoneal spillage of contrast occurred, and, as
26 such, constitutes negligence.

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PRAYER

WHEREFORE, complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Division issue a decision:


1. Revoking or suspending Physician and Surgeon's Certificate No. A23930, heretofore issued to respondent Terry A. Dichter, M.D.;

2. Revoking, suspending, or denying approval of respondent's authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. Ordering respondent to pay the Division the reasonable costs of the investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring;

4. Taking such other and further action as the Division deems necessary and proper.

DATED: August 4, 1999 .



Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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